REGD. GOA - 5

Panaji, 18th August, 1998 (Sravana 27, 1920)

SERIES II No. 20

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY
No. 3

GOVERNMENT OF GOA

Goa Legislature Secretariat

Notification

No. LA/A/4042/1998

The following decision dated 14th August, 1998 of the Speaker of Legislative Assembly of State of Goa, under Article 191 (2) of the Constitution of India of the Tenth Schedule of the Constitution of India is hereby notified and published.

No. 117 The following decision dated 14th August, 1998 of the Speaker of Legislative Assembly of State of Goa under Article 191(2) of the Constitution of India under Tenth Schedule of the Constitution of India is hereby notified and published.

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Petition No. 1 of 1998 under Article-191(2) of the Constitution of India by Shri Pratapsingh R. Rane.

V/S

1. Dr. Wilfred A. D' Souza.
2. Shri Dayanand G. Narvekar.
3. Shri Subhash A. Shirodkar.
4. Shri Pandurang Bhatale.
5. Shri Pandu V. Naik. ... Respondents.

Petition No. 2 of 1998 under Article 191 (2) of the Constitution of India by Dr. Wilfred Mesquita.

V/S

1. Dr. Wilfred A. D'Souza.
2. Shri Dayanand G. Narvekar.
3. Shri Subhash A. Shirodkar.
4. Shri Pandurang Bhatale.
5. Shri Pandu V. Naik.
6. Shri Chandrakant Chodankar.
7. Dr. Carmo Pegado.
8. Smt. Fatima D'Sa.
9. Shri Jagdish Acharya.
10. Shri Deo G. Mandrekar. ... Respondents.

JUDGEMENT

1. The two Petitions have been filed for a declaration that the Respondents therein, have become subject to Disqualification under the Tenth Schedule of the Constitution of India.

2. Since the Petitions raise identical and inter-connected issues and the Respondents in Disqualification Petition No. 1/98 are also Respondents amongst others in Disqualification Petition No. 2/98, these Petitions were taken up together and common arguments advanced and therefore, can be conveniently disposed by a Common Judgement. The learned Advocates for the parties requested that both the petitions be clubbed together.

3. Both Petitions were filed on 27th July, 1998. On perusing the Petitions and the annexures thereto, it was verified that the petitions complied with the requirements of Rule 6 of "The Members of the Goa Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986" hereinafter referred to as **"The Disqualification Rules 1986"** for short and therefore Notice for interim relief was directed to be issued to each of the Respondents in each Petition returnable on 28th July, 1998 and as far as the main Petitions, summons were directed to be issued to the Respondents in each Petition, returnable on 3rd August, 1998.

4. In the Notice dated 27-7-1998, for grant of interim relief, it had correctly been mentioned that the question of grant of interim relief, the Petitions would be heard on 28-7-1998: However, inadvertently the Public Notice issued in the Press contained the returnable date for interim relief as 28th August, 1998 instead of 28th July, 1998.

5. On 28th July, 1998, learned counsels for the Petitioners were present. Despite waiting for quite a while, neither Respondents nor any person on their behalf appeared. At about 12.45 p. m., Petitioner

Dr. Wilfred Menezes Mesquita through his learned counsel, made an application renewing the request for ad-interim relief. After hearing the learned counsel for the afore-referred Petitioner, ad-interim order was passed at about 1.30 p. m., which is on record, and the matter was posted for confirmation of ad-interim relief on 29th July, 1998.

In the meanwhile, the Secretariat of the Legislative Assembly received copy of a communication addressed to the Governor of Goa wherein it was inter alia contended that Speaker had no powers to pass interim orders, which has also been placed on record.

6. On 29-7-1998, Petitioners were represented by their Counsels and Respondents were represented by Dr. J. E. Coelho Pereira, Senior Advocate with Shri Mahesh Rane.

7. Arguments were heard. However since learned Senior Advocate Dr. Coelho Pereira made a plea that he required time to go through the Petition and annexures and also be prepared for arguments, the Petitions were adjourned on the question of confirmation of ad interim relief to 31-7-1998 at 4.30 p. m.

8. In the meanwhile, the Respondents filed Writ Petitions before the Honourable High Court of Bombay, Panaji Bench being Writ Petition No. 296/98 and Writ Petition No. 297/98 raising various pleas as contained therein, copies of which are on record.

9. On the next date of hearing viz. on 31-7-1998, request was made on behalf of the Respondents for grant of time, to enable the Respondents to file a detailed reply on the question of interim relief as also on the merits of the Petitions. Therefore, adjournment was granted and the matters were adjourned to 3rd August, 1998 at 10.30 a. m. viz. when summons in the Petitions had been made returnable.

10. On 3rd August, 1998, Respondents filed a comprehensive reply to each of the Petitions on the question of interim relief and also on merits of each Petition. On request of Shri S. Vahidulla, learned Advocate for the Petitioners, the matters were adjourned to Tuesday, 4th August, 1998 at 10.30 a. m.

11. On 3rd August, 1998, the Honourable High Court pronounced its Judgements in the above-referred Writ Petitions wherein the Honourable High Court upheld the power of the Speaker to grant interim including ad interim Orders. For reasons set out in its Judgement, the High Court quashed the ad interim Orders passed on 28-7-1998.

I have been set right and corrected by the Honourable High Court for passing the interim Order on the ground that I had taken decision in undue haste, which was in violation of the principles of natural justice. I have therefore fallen in line that I should not hastily decide the present matter and have therefore to objectively to decide the matter in accordance with the principles of law, laid down by the Honourable High Court.

12. On 4th August, 1998, learned Advocates Shri A. N. S. Nadkarni with Shri C. A. Ferreira and Shri S. Vahidulla, appeared for the Petitioners. Learned Senior Advocate Dr. J. E. Coelho Pereira with Adv. Vilas Thali and Adv. Mahesh Rane appeared for the Respondents. Shri Nadkarni filed Rejoinder in each of the Petitions to the reply of the Respondents. Dr. Coelho Pereira submitted an application dated 4-8-1998 raising plea of bias and requested that this issue be taken first and a ruling be given before proceeding with the merits of the Petitions. Dr. Coelho Pereira also stated that he was prepared to argue the matter finally and expressed his readiness in this regard.

I informed Dr. Coelho Pereira that the entire arguments could be heard and the issue of Bias would be decided in the Judgement on merits.

13. At the outset of the hearing, Shri Nadkarni, learned Advocate for the petitioners drew my attention to sub-rule 3(b) of Rule 7 of the Disqualification Rules, 1986 which requires a copy of the Petition to be forwarded to the Leader of the Legislature Party for his comments and since Disqualification Petition No. 2/98 was not filed by the Leader of the Indian National Congress Legislature Party he contended that notice ought to be issued to him and in the meanwhile the question of interim relief could be proceeded with and, the hearing in the main Petition be adjourned. Against this, Dr. Coelho Pereira vehemently opposed this contention. Dr. Coelho Pereira submitted that the requirement was not mandatory as the Disqualification Rules are mere procedural rules and not binding and at any rate, the Leader of the Indian National Congress Legislature Party, Shri Pratapsing Rane had himself filed Disqualification petition No. 1/98 and notwithstanding these facts, he would not raise any objection at any future stage as to the non-compliance of this provision. He opposed any adjournment of the hearing and demanded that Final Hearing of the Main Petition be proceeded with and the question of separating the arguments on merits and arguments on interim reliefs in the present cases, ought not to be permitted.

I am unable to accept the argument of Shri Nadkarni. I agree with Dr. Coelho Pereira that the hearing of the matters should proceed since the Rules are mere procedural rules. I am further of the opinion that since Dr. Coelho Pereira himself has submitted that he will not raise any objection as to non-compliance of Rule 6(3)(b) of the Disqualification Rules, 1986, no point would be served in further delaying the matter, on the point raised by Shri Nadkarni. I therefore directed the respective advocates to proceed. Both parties expressed that they did not want to lead any evidence and were fully anxious to argue the matters. Accordingly, arguments were fully heard till 1.45 p. m. on 4-8-1998 itself.

I have heard Shri A. N. S. Nadkarni for the Petitioners and Dr. J. E. Coelho Pereira for the Respondents at considerable length.

14. In view of the plea of bias raised by the Respondents, and specially on account of the Motion of Confidence proposed to be tabled, I would have avoided to decide the matter because of such accusation. However, since I am left with no option but to decide the matter, I propose to go into the questions honestly and to the best of my ability.

15. For appreciation of the controversy between the parties it may be necessary to advert to the pleadings of the respective parties, which can be briefly summarised as hereinunder.

a) The Petitioner, Shri Pratapsingh Rane has filed a Disqualification Petition No. 1/98 on 27th July, 1998 for a declaration that the Respondents therein have become subject to Disqualification under the Tenth Schedule of the Constitution of India.

b) The Petitioner relied upon the intimation dated 25-7-98 (Exb. B Colly. to the Petition) whereto annexed is a copy of the Order dated 24-7-98 signed by Shri Shantaram Naik, the President of the Goa Pradesh Congress Committee expelling five Members namely Shri Chandrakant Chodankar, Shri Jagdish Govind Acharya, Shri Deo Mandrekar, Smt. Fatima D' Sa and Shri Carmo Pegado for reasons set out in the order dated 24th July, 1998, from the primary membership of the National Congress.

c) It is contended by the Petitioner that two Members of the Goa Legislative Assembly namely Shri Joaquim Alemao and Shri Arecio D' Souza earlier belonging to the **United Goan Democratic Party** have been admitted as the Members of the **Indian National Congress Legislature Party.** The Petitioner relied upon the intimation dated 25-7-98, which was handed over to me on 25-7-98, along with the relevant *Form I* of the strength of the Indian National Congress Legislature Party and *Form III* pertaining to each of the Members of the Legislature Party.

d) The Petitioner has also contended that ten Members of the House have submitted an intimation to this office dated 27-7-98 (Exb. A to the Petition) wherein it is contended by the Petitioner that what these ten Members have intimated was that they had decided to form a separate group in the **Congress (I)** Legislature Party and that there was no whisper of a split in any political party.

e) The Petitioner contended that in view of the intimation dated 27-7-98 (Exb. A to the Petition) the above named Respondents have in no uncertaim terms admitted that they have voluntarily given up membership of their original political party as defined in Clause (d) of Paragraph 1 of the Tenth Schedule of the Constitution, namely the **Indian National Congress** and consequently therefore, in view of Paragraph 2 of the Tenth Schedule of the Constitution, all the five Respondents named therein are disqualified for being Members of the House.

f) Petitioner further contended that the Respondents cannot claim to constitute a group of not less than one-third of the membership of the **Indian National Congress Legislature Party** since according to the Petitioner the Respondents formed a group of only five persons and at the relevant time, the **Indian National Congress Legislature Party** comprised of 20 Members of the Legislative Assembly.

g) The Petitioner contended that disqualification is automatic on the happening of eventualities specified in Paragraph 2 of the Tenth Schedule and in view of the matter, the Respondents had incurred disqualification under Article 191 (2) read with the Tenth Schedule of the Constitution of India.

h) The Petitioner has averred in his Petition that he did satisfy himself that there are reasonable grounds that the question has arisen as to whether the Respondents have become subject to disqualification under the Tenth Schedule and therefore the Petition.

The Petitioner prayed for a declaration that Respondents therein had become subject to disqualification under the Tenth Schedule and also for interim including ad-interim reliefs as prayed therein.

16. The Petitioner, Dr. Wilfred Menezes Mesquita, in Disqualification Petition No. 2/98, has in his Petition also filed on 27-7-1998, prayed for a declaration that the Respondents named therein, have become subject to disqualification under the Tenth Schedule of the Constitution. This Petition is filed against the five Respondents named in Disqualification Petition No. 1/98 filed by Shri Pratapsingh Rane and also against five others named therein.

a) In his Petition, Dr. Mesquita has contended that in their joint intimation dated 27-7-1998 (Exb. A to his Petition) the Respondents have not averred that there is a split in the original political party viz. the Indian National Congress to which the Respondents belong. He stated that the Respondents that they had decided to form a group in the Congress (I) Legislature Party. That there was no whisper of any split of any political party, much less the Indian National Congress.

b) He further stated that in the same Legislature Party, there cannot be recognition of two groups and on account of their joint intimation dated 27-7-1998 (Exb. A) the Respondents had, in no uncertain terms admitted that they had voluntarily given up the Membership of their original political party as defined in Clause (d) of paragraph 1 of the Tenth Schedule and therefore, all ten Respondents are disqualified for being Members of the House.

Apart from relief for declaration, he also prayed for interim and ad interim reliefs.

17. In reply the Respondents have raised various and identical contentions in their reply which are summarised as herein under:

a) That the Respondents apprehend a bias in so far as the Adjudicating Authority is concerned on grounds that there was a notice dated 13-7-98 given by three Members of the Legislative Assembly namely, Shri Manohar Parrikar, Smt. Shashikala Kakodkar and Shri Surendra Sirsat to move a resolution for Removal of the Adjudicating Authority/ /Speaker from his office.

b) That as and when the matter would come up in the Assembly, the Respondents would have voted in favour of the motion.

c) That they apprehended bias of the Adjudicating Authority/ /Speaker since an interim relief was granted in the absence of the Respondents, restraining the Respondents from participating in the proceedings of the House until further orders.

d) The Respondents apprehend bias also on the ground that the Adjudicating Authority/Speaker belongs to the original political party viz. The Indian National Congress.

e) That the Adjudicating Authority/Speaker has an animus against Respondent No. 1, who is the leader of the group and had staked claim at the relevant time to form the Government and is now the Chief Minister of the State. (In the application dated 4-8-1998, Respondents have contended at paragraph 2 therin, that Respondent No. 1 would be taking the Vote of Confidence which is scheduled for 19-8-1998 and the whole attitude of the Adjudicating Authority/Speaker is to prevent Respondent No. 1 from taking Vote of Confidence).

f) That the Petition is liable to be dismissed as the same is filed against the provisions of the Disqualification Rules, 1986.

g) That a joint Petition is not maintainable; individual petition against each Respondent/Member ought to have been filed.

h) The Petition does not contain concise statement of material facts on which the Petitioner relies.

i) The Petition has not been verified in the manner laid down in the Rule 6(6) of the Disqualification Rules, 1986 and annexures thereto have not been signed and verified as contemplated in Rule 6(7) of the said rules, rules 6 & 7 being mandatory in nature.

j) That the claim in the Petition is malafide and lacks reasonable grounds.

k) That on a true construction and meaning, the letter dated 27-7-98 clearly indicates that the only conclusion one can derive is that it was an intimation that there has been a split in the original party in the original **Indian National Congress Legislature Party** caused by Respondents and other signatories of the said letter.

l) That the Respondents and other Members of the Respondents group namely of the Legislative Assembly afore referred have taken resolution and in pursuance of that resolution split from the Original **Indian National Congress**, which resolution was taken on 24-7-98 at the residence of Respondent No. 1 after the Assembly Session held on the 24th of July, 1998.

m) In support of the evidence the Respondents have sought to rely on various documents annexed to their reply including a resolution Exhibit R9 to their reply.

n) That the letter annexed by the Petitioner at Exb. B Colly. viz. the letter of Shri Shantaran Naik expelling the members is a manufactured and concocted letter. That in fact there was no expulsion of these Members at all for reasons set out in the reply.

18. The Petitioners in their Rejoinder controverted all the above contentions of the Respondents.

19. Before dealing with the submissions put forward by both sides it is necessary to understand the purpose of incorporation of the Tenth Schedule in the Constitution of India.

20. The Tenth Schedule of the Constitution was incorporated for the purpose of preventing defections which has been recognised as a Political evil. The statement of objects and reasons appended to the bill which was adopted as the Constitution 57th Amendment Act, 1985 says:

> "The evil of political defection has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principle which sustain it. With this object, as assurrance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of parliament an anti-defection Bill. This bill is meant for outlawing defection and fulfilling the above assurance."

On December 8, 1967 the Lok Sabha has passed an unanimous resolution in terms following

> "[A] high level Committee consisting of representatives of political parties and constitutional experts be set-up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard."

The said Committee known as the "Committee on Defections" in its report dated January 7, 1969, inter alia, observed:

> "Following the Fourth General Election, in the short period between March, 1967 and February, 1968, the Indian political scene was characterised by numerous instances of change of party allegiance by legislators in several States. *Compared to roughly 542 cases in the entire period between the First and Fourth General Election, at least 438 defections occurred in these 12 months alone. Among Independents 157 out of a total of 376 elected joined various parties in this period. That the lure of office played a dominant part in decisions of legislators, to defect was obvious from the fact that out of 210 defecting legislators, of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections.* The other disturbing features of this phenomenon were: multiple acts of defection by the same person or set of persons (Haryana affording a conspicuous example); few resignations of the membership of legislature or explanation by the individual defectors, indifference on the part of defectors to political proprieties, constituency preference or public opionon; and the belief held by the people and expressed in the press that corruption and bribery were behind some of these defections."

The Committee on Defections recommended that a defector should be debarred for a period of one year or till such time as he resigned his seat and got himself re-elected from appointment to the office of a Minister including Deputy Minister or Speaker or Deputy Speaker, or any post carrying salaries or allowance to be paid from the Consolidated Fund of India or of the State or from the fund of Government undertaking in public sector in addition to those to which the defector might be entitled as legislator. The Committee on Defections could not, however, reach an agreed conclusion in the matter of disqualifying a defector from continuing to be a Member of Parliament/State legislator.

Keeping in view the recommendations of the Committee on Defections, the Constitution (Thirty-second Amendment) Bill, 1973 was introduced in the Lok Sabha on May 16, 1973. It provided for disqualifying a Member from continuing as a Member of either House of Parliament or the State Legislature on his voluntarily giving up his membership of the political party by which he was set up as a candidate at such election or of which he became a Member after such election, or on his voting or abstaining from voting in such House contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf without obtaining prior permission of such party, person or authority. The said Bill, however, lapsed on account of dissolution of the House. Thereafter the Constitution (Forty-eighth Amendment) Bill, 1979 was introduced in the Lok Sabha which also contained similar provisions for disqualification on the ground of defection. This Bill also lapsed and it was followed by the Bill which was enacted into the Constitution (Fifty-second Amendment) Act, 1985.

21. Adverting to the Tenth Schedule of the Constitution, it is necessary to ascertain the provisions which deal with disqualification and exceptions thereto. Paragraph 2 of the Tenth Schedule reads as under:

"2. Disqualification on ground of Defection:—

(1) Subject to the provisions of paragraphs 3, 4, and 5, a member of a House belonging to any political party shall be disqualified for being a Member of the House,—

a) if he has voluntarily given up his membership of such political party; or

b) If he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation– *For the purposes of this sub-paragraph,—*

a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a condidate for the election as such member.

b) a nominated member of a House shall, —

i) where he is a member of any political party, on the date of his nomination as such member, he deemed to belong to such political party,

ii) In any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

....."

22. Paragraph 3 of the Tenth Schedule of the Constitution provides that Disqualification on ground of defection is not to apply in case of split whilst paragraph 4 of the Tenth Schedule of the Constitution provides that Disqualification on ground of defection not to apply in case of merger.

23. Since controversy revolves around paragraph 2 and paragraph 3 of the Tenth Schedule, no further reference need be made to paragraph 4 of the Tenth Schedule.

24. Paragraph 3 of the Tenth Schedule of the Constitution of India provides as under:

"3. *Disqualification on ground of defection not to apply in case of split* – Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground:

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph."

25. In view of the leadings, the common questions that arise for my determination are as follows:

a) Whether the Petitioners prove that the Respondents have become subject to Disqualification on ground of defection as contained in paragraph 2 of the Tenth Schedule of the Constitution of India ?

b) Whether the Respondents prove that a joint Petition is not maintainable and individual petitions are required to be filed against each Respondent ?

c) Whether the Respondents prove that the Petitions are not maintainable as the same do not contain concise statement of material facts on which the Petitioners rely?

d) Whether the Respondents prove that the Petition is not maintainable as the same has not been verified in the manner laid down in Rule 6(6) of the Rules and Annexures thereto have not been signed and verified as contemplated in Rule 6(7) of the Disqualification Rules 1986?

e) Whether Rules 6 and 7 of the Disqualification Rules, 1986 are mandatory in nature?

f) Whether Respondents prove that Adjudicating Authority has a bais and should not hear the Petitions?

g) Whether the Respondents prove that there is a split in the original Political Party not attracting Disqualification under the Tenth Schedule as provided in paragraph 3 of the Tenth Schedule of the Constitution of India?

h) What order? What relief?

26. None of the learned Advocates expressed any desire to lead evidence and they expressed desire to argue the Petitions on merits forthwith. Therefore I heard Shri A. N. S. Nadkarni for the Petitioners and Dr. J. E. Coelho Pereira for the Respondents at length.

27. Shri A. N. S. Nadkarni, learned counsel for the Petitioners submitted that the sequence of events have to be looked at which according to him are as follows:

(i) Expulsion of five MLAs on 24th July, 1998 namely Shri Chandrakant Chodankar, Shri Jagdish Govind Acharya, Shri Deo Mandrekar, Smt. Fatima D'Sa and Shri Carmo Pegado from the primary membership of the **Indian National Congress** for having indulged in anti party Activities including attempts to embarrass the Government and tarnish the image of the **Indian National Congress** and thereby acting in a way calculated to lower the prestige of the party (Exb. B. Colly);

(ii) That two MLAs of the **UGDP** were enrolled as Members of the **Indian National Congress** on the 24th July, 1998 (Exb. B. Colly).

(iii) That as on 24th July, 1998, the strength of the Indian National Congress Legislature Party was therefore twenty.

(iv) That by intimation dated 25-7-98 handed over on 25-7-98 itself, necessary intimation of the above together with Forms I & III had been furnished to the Speaker.

(v) That the intimation dated 27th July, 1998 by Respondents to the Speaker sent to the Speaker at 12.30 p.m. on 27-7-1998, (Exhibit A to Petition) merely spoke of a meeting of the MLAs named therein, wherein it was allegedly decided to form a separate group in the **Congress (I)** *Legislature Party*, known as GOA RAJIV CONGRESS PARTY".

(vi) That in this communication dated 27-7-98 (Exb. A to the Petition) there is no mention or whisper that they constitute the group representing a faction *which has arisen as a result of a split in the original political party*.

(vii) That the date of 24-7-1998, inserted in the letter is nothing but ante-dating the communication with an oblique purpose in view of the admitted expulsions.

(viii) That the intimation in fact speaks only of a decision of forming a separate group in the **Congress (I)** Legislature Party.

(ix) that there cannot be two groups in the Legislature party and also that at any rate there is no party as the **Congress (I)** Legislature Party; the party recognised by the Election Commission of India is the Indian National Congress.

(x) That Exhibit R-9 purporting to be a resolution is fraudulent, malafide and a concocted document as the same was not in existence on 24th of July; it had not been annexed to be the communication made by the Respondents to the Speaker on 27th July, 1998 or to any other authority that even this purported resolution does not indicate when the same was signed but is only brought in an attempt to overcome fatal defect in the communication dated 27-7-98 addressed to the Speaker.

(xi) That the fact of expulsion has been admitted in the Writ Petition Nos. 296/98 and 297/98 filed before the Honourable High Court by all the Respondents and was even taken as Ground I in the Petitions.

(xii) That when five members were expelled, the defection from the original political party viz. The Indian National Congress by the remaining five members viz. the Respondents Nos. 1 to 5 in each of the two Disqualification Petitions, amounts to defection in as much as the strength of the remaining five i.e. Respondents 1 to 5 is below one-third of the total number of the members of the legislature party and hence the defections are not protected by virtue of the provisions of the Tenth Schedule of the Constitution of India.

(xiii) That the five expelled members viz. Respondents Nos. 6 to 10 in Disqualification Petition No. 2/98, having joined another political party, have squarely become subject to disqualification under the Tenth Schedule of the Constitution of India.

(xiv) That question of **bias** on the first ground was not tenable since in the reply it has been admitted by the Respondents that the Notice/Motion for the Removal of the Speaker was not signed and/ /or moved by any of the Respondents. The question that as and when the same would come up, the same would have been supported by the Respondents is totally farfetched.

(xv) On the aspect of the second Motion for Removal of Speaker, which is sought to be placed on record by the application dated 4-8-1998, Shri Nadkarni submitted that the same is contemptuous in that:

(a) The Rules of Procedure and Conduct of Business of the Goa Legislative Assembly does not contemplate giving of any Notice when the House is not in session.

(b) That the Notice of Motion now purported to have been given, from its very date and time when given is indicative of the intention of the Respondents to pre-empt totally the hearing of the present Petition in a malafide manner.

(xvi) That on the ground of bais on account of the discrepancy in the date for interim relief Shri Nadkarni contended that the error in the publication in the newspaper was a deliberate mischief by or at the behest or instance of the Respondents. He further contended that this mischief should be investigated. At any rate the record revealed that the notice was directed to be issued returnable on the 28th of July, 1998. The personal notice to which all the Respondents correctly indicated on the 28th of July, 1998. No bias can be deduced from the same, more so when the returnable date for summons was 3rd August, 1998. Also the affidavit of Shri Yuvraj Naik also disclosed that the notice was in fact returnable on the 28th of July 1998. Ad interim had been sought for, by him on the very day of the presentation of the Petition.

(xvii) That on the ground of bais that the Adjudicating Authority belonged to a particular political party, Shri Nadkarni referred to the Judgement of **"Kihoto Hollohan"** reported in 1992 Supple (2) SCC 651 and more particularly to Paragraph 112 up to 119 wherein this very argument has been dismissed and rejected by the Honourable Supreme Court.

(xviii) That regarding bias on the ground that the Adjudicating Authority has an animus against respondent No. 1, it was a belated defence and low level argument without any substance or foundation totally unsupported by any document, basis, incident or data on which the allegation was made. Therefore the same is required to be dismissed.

(xix) The apprehension in the minds of the Respondents is to be dismissed as being imaginary and totally untenable and at any rate it is not a reasonable apprehension at all.

28. Dr. J. E. Coelho Pereira, learned Senior Counsel, appearing for the Respondents made his submissions which can be summarised as herein below:

I. That the present Speaker should not hear the matter on grounds of **bias** for the following reasons:

a) Motion of No Confidence has now been moved afresh by the present Respondents.

b) Since ad-interim relief was granted in absence of Respondents by the undersigned, which has since been quashed by the High Court, Respondents apprehended bias.

c) That the adjudicating authority/Speaker continues to belong to the Indian National Congress, of which the Respondents have split and the Petition has been filed by Members of the Indian National Congress.

d) That the Adjudicating Authority has an animus against Respondent No. 1.

II. Dr. Coelho Pereira further submitted that the Petition is **not maintainable** on the ground that no concise statement of material facts on which Petitioner relies has been set out.

Learned Advocate Dr. Coelho Pereira did not raise any of the other Preliminary objections, as had been set out in the Reply of the Respondents, except the above.

III. Dr. Coelho Pereira further submitted **on merits,** that the intimation dated 27-7-1998 on its true construction and meaning clearly indicated that the only conclusion one can derive is that it was an intimation that there has been a split in the original Party namely in the Indian National Congress Legislature Party caused by Respondents and other signatories thereto, which is re-enforced by the Resolution (Exhibit R-9) to the reply.

29. Considering that issues (b), (c), (d) and (e) are in the nature of preliminary objections, it is necessary to deal with the same at the outset. However, I propose first to deal and dispose of the objection regarding bias.

30. **Regarding Issue (f)** the Respondents, counsel learned Senior Advocate Dr. J. E. Coelho Pereira at the commencement of the hearing moved a separate application dated 4-8-1998 and once again raised the plea of bias in the Adjudicating Authority. He referred to Paragraph 2 of his application dated 4-8-1998 to indicate his pleading regarding a mistake in the public notice and that this mistake was deliberately made in an attempt to prevent the Respondents from appearing at the hearing and thus enabling the Petitioner to obtain an interim relief preventing the Respondents group from participating in the Assembly proceedings.

31. He referred to the Order of the Honourable High Court in Writ Petition Nos. 296 and 297 of 1998 and more particularly paragraph 36 wherein the Honourable High Court in Page 39 has held that the right to vote is an important right.

32. He then submitted that the question of bias is not what the Adjudicating Tribunal thinks but what the Respondents apprehend. He further contended that Article 180 of the Constitution contemplates provision for appointment of another person to act as Speaker by the Governor. He relied on two decisions namely AIR 1960 SC 468 with particular reference to paragraph 10. On the question of bias he also relied on the judgement reported in AIR 1987 SC 2386. He then contended that the High Court in the judgement dated 3rd August, 1998 had held that the decision of ad interim relief was without following principles of natural justice and therefore, the present Adjudicating Authority ought not to hear the above petition and no decision ought to be given in the circumstances. He further submitted that the Speaker's office is a high Constitutional office. Therefore the judgement of the Supreme Court should be followed and the Adjudicating Authority should stay away.

33. To this Shri Nadkarni, Learned Advocate for the Petitioner contended that the allegations of bias or apprehension of bias are totally ill founded. He pointed out that the Governor had given a message for consideration of the House. The proceedings reflect that the ad interim order was passed at 1.30 p.m. on 28-7-1998 whereas the Governor's message was received at 2.00 p.m. on 28-7-1998.

There was no notice by the Respondents for Removal of the Speaker. The present motion referred to in the application dated 4-8-1998 which has been filed, is only with a view to pre-empt the hearing of the present proceedings and is not a valid motion since under the Rules for Procedure of the Business of the House, such notice can be given only when the House is in session and purely to give a lever to the respondents to raise and agitate the plea of bias.

He then submitted that mere averment of animus, is a dishonest attempt to scuttle the proceedings, more specifically when there is no material set out nor instances disclosed as to when and how the animus has arisen.

He further contended that assuming for arguments sake, though not admitting that there was a bias. It was pertinent to see the provisions of the Tenth Schedule and more particularly Paragraph 6 which provided that the decision on questions as to disqualification on grounds of defection is to be determined by the Speaker of the House and it is only when a question arises as to whether the Speaker of the House himself has become subject to disqualification, only then that the question shall be referred for decision to such member of the House as the House may elect in this behalf.

He then referred to Article 180 of the Constitution and stressed that sub-Article (1) to Article 180 of the Constitution relates only to duties being performed by the Deputy Speaker when the office of the Speaker is *vacant* and if the office of the Deputy Speaker is also *vacant*, then by such Member of the Assembly as the Governor may appoint for the purpose.

He referred to Article 179 of the Constitution to indicate when there is a vacancy in the office of the Speaker or Deputy Speaker. He also relied on the second Proviso to Article 179 of the Constitution which provides that even in case of dissolution of Assembly, the Speaker shall not vacate office until immediately before the first meeting of the Assembly after the dissolution.

He then submitted that without prejudice to the aforesaid, the Supreme Court in *The Election Commission of India versus Dr. Subramaniam Swamy and others* reported in 1996 (4) SCC 104 had laid down the doctrine of necessity when the situation so warranted.

He also referred to the judgement of the Supreme Court in *"Kihoto Hollohan's"* case with special reference to Paragraphs 112 - 119, wherein the Honourable Supreme Court has rejected the arguments of bias of the Speaker on grounds of the Speaker belonging to a particular political party.

34. I have considered the rival contentions and perused the records. Admittedly the Tenth Schedule confers power for decision on the question as to the disqualification on the grounds of defection exclusively to the Speaker of the House, whose decision is to be final.

It is also seen from Paragraph 6 of the Tenth Schedule that only in case where the question is to be decided as to whether the Speaker of the House himself has become subject to disqualification, then the question shall be referred for the decision of such member to the House as the House may elect in this behalf.

35. I am in agreement with Shri Nadkarni that there is no provision or scope to empower any other person to be appointed in determining the issue as to whether a member has become subject to disqualification on ground of defection under Article 191 (2) of the Constitution read with the Tenth Schedule, except as indicated above.

36. Article 180 of the Constitution refers only to a situation when the office of the Speaker/Deputy Speaker is vacant. The Constitution does not contemplate appointment of another person as Speaker/Deputy Speaker or any other person unless there is a vacancy in either of the offices. Even mere absence of the incumbent is not sufficient or a ground for appointment to any of these posts.

The vacancy, as rightly pointed out, can be only in cases/situations contemplated in Article 179 of the Constitution. In *the Election Commission of India and another versus Dr. Subramaniam Swamy and another* reported in 1996 (4) SCC 104, the Honourable Supreme Court when considering such a situation has held as under:

> "16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. **It is often invoked in cases of bias where there is no other authority or judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations it would impede the course of justice itself and the defaulting party would benefit therefrom.** Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked."

37. On a prima facie perusal of the Petition, annexures and submissions made on behalf of the Petitioner including the application renewing the request for ad interim exparte relief at 1.30 p.m. on 28th July, 1998, I had granted a limited ad interim relief. The message of the Governor was in fact received in the office of the Speaker at 2.00 p.m. on 28th July, 1998.

The contention of Dr. Coelho Pereira that the order was based upon receipt of the Governor's message is not correct. In my order dated 28th July, 1998 I had clarified the issue regarding the discrepancy in the date in the Public Notice as being error. The contention of Shri Nadkarni that this is a manipulation of or on behalf of the Respondents is rejected.

38. At any rate it was open for the Respondents to appear and oppose confirmation of the ad interim relief. The Respondents preferred Writ Petition before the High Court, which has quashed the ad interim relief for reasons contained in the judgement, whilst upholding the power of the Speaker under the Tenth Schedule, to grant interim including ad interim relief and has corrected me for reasons stated hereinabove.

39. I have perused the Judgement of the Honourable Supreme Court referred to by Dr. J. E. Coelho Pereira.

In *Mineral Development Ltd. v. State of Bihar & anr.* reported in AIR 1960 SC 468, in paragraph 10, the Constitution Bench of the Supreme Court, relying on it's earlier decision in *Nageswara Rao v. State of Andhra Pradesh* (AIR 1958 SC 376), reiterated the principles governing bias vis-a-vis judicial tribunals.

In that case the concerned Minister who heard the matter had not only a personal interest in the matter, but the Honourable Supreme Court in Paragraph 11 at page 473, has categorically recorded a finding that the Revenue Minister had personal bias within the meaning of the decisions and he should not have taken part either in initiating the enquiry or in cancelling the licence.

40. In so far as the second citation viz. *Ranjit Thakur v. Union of India & ors.* reported in AIR 1987 SC 2386, Dr. Coelho Pereira placed heavy reliance on paragraph 7 thereof wherein the Honourable Supreme Court has held as under:

"7. As to the tests of likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look for at his own mind and ask himself, however, honestly, am I biased ?" but to look at the mind of the party before him ....."

41. In fact, without any argument, to allay any fear or any suspicion of bias, I had studied the issue to enable myself to entrust the petitions to some other authority for decision. However given the Constitutional provisions which do not provide for any other person to be the Adjudicating Authority, except as detailed above, the doctrine of necessity will have to be invoked to prevent not only a stalemate but also to prevent stifling of the action altogether.

I feel that the apprehension of the Respondents of bias on this count is totally untenable and unfounded.

42. The allegation of bias on ground of animus as sought to be made on persuing the records and also the pleadings except for mere statement that there is an animus between Respondent No. 1 and the Adjudicating Authority, nothing has been set out nor any material particulars have been disclosed to found such a claim. In fact, I may state that there is actually no animus between Respondent No. 1 and myself.

43. It may be relevant to state that even during the Assembly session which was prorogued on the close of business on 29th July, 1998, no motion for Removal of the present Adjudicating Authority been moved by any of the Respondents and more particularly by Respondent No. 1.

44. The contention therefore that there is an animus is purely an afterthought. The present motion submitted has no significance nor sanctity nor any legal standing since the present motion, referred to in the application dated 4-8-1998 filed in the Petition, has not been moved when the House is in session and the same has been moved in an apparent bid to pre-empt the hearing of these petitions.

45. Even if a slight allegation of bias was made, I would prima facie be inclined not to take up the matter and recuse myself from hearing the petitions not because the allegations of bias are true but merely to dispel any doubt in the minds of any of the parties that the decision arrived at is purely on the basis on any bais.

However the Constitutional mandate casts a duty on the Speaker to decide these issues.

On the question of bias in the Speaker on account of the Speaker belonging to a political party, the Honourable Supreme Court in **"Kihoto Hollohan"** (Supra) at paragraphs 118 and 119 (of SCC) has held as under:

"118. It would, indeed, be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of the high office. The robes of the Speaker do change and elevate the man inside.

119. Accordingly, the contention that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provisions on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of Parlimentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such Constitutional functionaries should not be considered exceptionable."

46. In view of the above, the contention of bias of the Adjudicating Authority requires to be rejected. Even otherwise the doctrine of necessity would come into play.

47. The issue(f) is therefore held as not proved and therefore answered in the negative.

48. Having dealt with the above Issue, I now propose to deal with the Preliminary Objections raised by the Respondents in the above Petitions.

Regarding Issue (c):

Dr. J. E. Coelho Pereira, learned counsel, in support of his contention, took me through Rule 6 of the Disqualification Rules, 1986. He submitted that in accordance with Rule 6 (5) (a), the Petition is required to contain a concise statement of the material facts on which the Petitioner relies. It was his contention therefore that on this ground itself, that the Petition ought to be dismissed.

49. On the other hand, learned Advocate Shri A. N.S. Nadkarni urged before me that the Rules of procedure are designed to facilitate justice and not meant to trip or defeat valid claims. He contended that the argument on behalf of the Respondents is misconceived and preposterous.

50. As far as the submissions as to the petition not containing concise statements of material facts Shri Nadkarni has submitted that a perusal of Rule 5(a) merely refers to pleadings to be made and no separate mention needs to be made as to which are the material facts on which the Petitioner relies. According to Shri Nadkarni there is full compliance of Rule 6 of The Disqualification Rules, 1986. Shri Nadkarni further contended that in Judgement in the matter of *Ravi S. Naik v. Union of India* reported in AIR 1994 SC 1185, the Supreme Court had categorically held that in respect of The Disqualification Rules, 1986 the same could not override Constitutional mandate and any infringement and or breach of the rules, is not fatal. He submitted that the Petitions contain necessary and material particulars on which the petitioners rely, as required.

51. I have perused each of the Petitions. It is seen that the Petitioners have specifically pleaded factual contents/averments in each of the Petitions. Verifications have also been done indicating the paragraphs which are true to his knowledge and separating the legal submissions in each of the Petitions. The contention that the Petitions do not contain concise statement of material facts on which the Petitioners rely, is an unjustified objection and therefore this objection is overruled. I therefore hold that the Petitions do contain concise statements of material facts on which the Petitioners rely.

It may be necessary to advert to the judgement of the Honourable Supreme Court in the matter of *Ravi S. Naik* (supra) wherein at paragraph 18, the Honourable Supreme Court has held as under:—

"18. The Submission of Shri Sen is that the petitions that were filed by Khalap before the Speaker did not fulfil the requirements of clause (a) of sub-rule 5 of Rule 6 in as much as the said petitions did not contain a concise statement of the material facts on which the Petitioner (Khalap) was relying and further that the provisions of clause (b) of sub-rule (5) of rules 6 were also not complied with in as much as the petitions were not accompanied by copies of the documentary evidence on which the Petitioner was relying and the names and addresses of the persons and the list of such information as furnished by each such person. It was also submitted that the petitions were not verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings and thus there was non-compliance of sub-rule (6) of Rule 6 and also in view of the said infirmities the petitions were liable to be dismissed in view of sub--rule (2) of Rule 7. We are unable to accept the said contention of Shri Sen. The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising

the power conferred on him under sub-paragraph (1) of paragraph (6) of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same, would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihoto Hollohon's case 1992 (AIR SCW 3497) (supra). Moreover the field of judicial review.....''

In view of the pronouncement of the Honourable Supreme Court, I, hold I therefor hold issue (c) is not proved and is therefore answered in the negative.

52. Regarding issues (b) & (d):

Except having taken these objections in the pleadings, learned Sr. Advocate Dr. Coelho Pereira has not made any submissions in this regard. I am of the opinion that Respondents are not serious about these Issues and have not proved the same.

In view of the above, Issues (b) and (d) are held as not proved and answered in the negative.

53. Regarding Issue (e):

Learned Senior Advocate Dr. Coelho Pereira also did not make any submissions on this Issue.

This Issue has therefore not been proved by the Respondents.

In view of the above, Issue (e) is held as not proved and answered in the negative.

In my View of the matter, the Petitions comply with all the requirements of Rule 6 and therefore the preliminary objections are therefore rejected. In the aforesaid circumstances, preliminary issues (b), (c), (d) and (e) are held as not proved and answered in the negative.

55. **Regarding Issue (a):** It is the case of the Petitioner that Respondents Shri Chandrakant Chodankar, Shri Jagdish Acharya, Shri Deo Mandrekar, Smt. Fatima D'Sa and Dr. Carmo Pedgado were expelled from primary membership of the Indian National Congress on 24th July, 1998. As a result of this expulsion they are "unattached'' and for all purposes continue to belong to the "Original Political Party'' namely the Indian National Congress and therefore joining any other party after this expulsion brings such a member within the provisions of Paragraph 2(1) (a) of the Tenth Schedule whereby a person has voluntarily given up membership of a political party. For this purpose Shri Nadkarni relied upon the judgement of the Supreme Court in *G. Vishwanathan v. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & anr.* reported in (1996) 2 SCC 353. Shri Nadkarni then contended that the remaining five Members of the Indian National Congress namely Dr. Wilfred D' Souza, Shri Dayanand Narvekar, Shri Subash Shirodkar, Shri Pandurang Bhatale and Shri Pandu Vassu Naik do not constitute 1/3rd of the total number of the Members of the Indian National Congress Legislature Party and therefore they attracted Disqualification on grounds of Defection. Shri Nadkarni sought to make a distinction between a **Member of the "Original Political Party''** and **Members of the Indian National Congress Legislature Party.** He submitted that whilst the Respondents Nos. 6 to 10 in Disqualification Petition No. 2/98, who had been expelled continued to be members of the Indian National Congress Party on Account of their expulsion, they could not be considered as Members of the Indian National Congress Legislature Party. He further stated that it is sought to be made out for the first time in the reply that the expulsion is allegedly bad and having no force of law when the Respondents themselves in the Writ Petition No. 296/98 and Writ Petition No. 297/98 have admitted the expulsion without challenge to the same and without raising any contention that the same was bad and/or illegal. That the Respondents cannot now be permitted to take a contrary stand.

Shri Nadkarni also further stated that the intimation dated 27-7-1998 addressed to the Speaker of the Legislative Assembly from its reading clearly indicates that the Respondents have decided to form, a group in the Congress (I) Legislature Party Known as "Goa Rajiv Congress Party'' with Respondent No. 1 as its leader, which apart from the fact prima facie does not satisfy the requirement of Paragraph 3 of the Tenth Schedule, which has not been pleaded, is itself defective for reasons that:

a) firstly the reference is to the Congress (I) Legislature Party when in fact there is no such recognised party.

b) Secondly, the signatories thereto claimed to have formed a group in a Legislature party.

c) Thirdly, mere formation of a group is not sufficient- there should also be a group representing a faction which has arisen as a result of a split in the Original Political Party and such group consists of not less that one-third of the Members of the Legislature Party, to avail of the benefits of Paragraph 3 of the Tenth Schedule.

56. Shri Nadkarni further urged that in fact there is no spilt in the Original Political Party namely the Indian National Congress, even by documents sought to be adduced: that the document Exb. R-9 to the reply is itself a concocted, fabricated and a false document since the same bears no date as to when it was signed nor is it purporting to be an extract of a Resolution nor was the same annexed with the intimation to the Governor or the communication dated 27-07-98 addressed to the Speaker, and has been prepared now to some how or the other, fill in the fatal lacunae, to avoid disqualification. Therefore, this document cannot be relied upon nor permitted to be looked into since the same is prima facie false and a got-up document. He further contended that the Honourable Supreme Court in the case of *Ravi Naik versus the Union of India* reported in AIR 1994 SC 1558 unequivocally held that two conditions are necessary for fulfilling requirements of paragraph 3 of the Tenth Schedule viz.

a) That a member of the House should make a claim that he and any other members of his Legislature party constitute a group which has arisen as a result of a split in a original political Party; and

b) That such group consists of not less than 1/3rd of the members of such legislature party.

58. According to Shri Nadkarni the above two conditions are to be read conjunctively and the mandate of satisfying both the conditions is clear. When questioned as to what meaning is to be given to the *"split in the Original Political Party"*, he contended that, that split must be vertical split through out the entire Organisation/Political Party and not only of members of the Legislative party and that there being no such split in the Original Political Party though there may be according to him taking the worst situation, 1/3rd of the Members since on account of their expulsion, five of the members of the Indian National Congress could not be members of the Indian National Congress Legislature Party, the above two requirements are conjunctive and this mandate has not been fulfilled and therefore the Respondents attracted Disqualification under Paragraph 2 of the Tenth Schedule.

58. Learned Sr. Advocate Dr. Coelho Pereira on the other hand only submitted that the Judgement in *G. Vishwanathan's* case helps the Respondents. He however did not elaborate or state how the same helped the Respondents. He then contended that he would confine to proving that there was a split in the Indian National Congress as required in para 3 of the Tenth Schedule.

59. In *G. Vishwanathan's* case reported in (1996) 2 SCC 353, the Honourable Supreme Court has clearly held as follows:

"11. It appears that since the explanation to para 2 (1) of the tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was

set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person "voluntarily give up" his membership of such political party, as provided in Para 2 (1) (a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.

12. We are of the view that labelling of a member as 'unattached' finds no place nor has any recognition in the Tenth Schedule. It appears to us that the classification of the members in the Tenth Schedule proceeds only on the manner of the entry into the House, (1) one who has been elected on his being set up by a political party as a candidate for election as such member; (2) one who has been elected as a member otherwise than as a candidate set up by any political party usually referred to as an 'independent' candidate in an election; and (3) one who has been nominated. The categories mentioned are exhaustive. In our view it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. **If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his membership of his political party and incurs the disqualification.** Being treated as 'unattached' is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to be assumed under the explanation to Para 2 (1). Such an arrangement and labelling has no legal bearing so far as the Tenth Schedule is concerned. **If the contention urged on behalf of the appellant is accepted it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breach of faith of the electorate. We are, therefore, of the opinion that deeming fiction must be given full effect for otherwise the expelled member would escape the rigour of the law which was intended to curb the evil of defections which has polluted our democratic polity.**

13. Mr. Shanti Bhushan laid stress on para 1(b) of the Tenth Schedule and contended that the legislative party in relation to a member of a House belonging to any political party means the group of all the members of that House for the time being belonging to that political party and so understood, that appellants who were thrown out or expelled from the party, did not belong to that political party nor will they be bound by any whip given up by that party and so, they are unattached members who did not belong to any political party, and in such a situation the deeming provision in sub-para (a) of the explanations to para 2 (1) will not apply. We are afraid that it is nothing but begging the question. Para 1 (b) cannot be read in isolation. It should be read along with paras 2, 3 & 4. Para 1 (b) in referring to the legislature party in relation to a member of a House belonging to any Political Party refers to the provisions of paras 2, 3 and 4, as the case may be, to mean the group consisting of that House for the time being belonging to that Political Party in accordance with the said provisions, namely, paras 2, 3 and 4, as the case may be. Para 2 (1) read with the explanation clearly points out that an elected member shall continue to belong to that Political Party by which he was set up as a candidate for election as such member. This is so notwithstanding that he was thrown out or expelled from that Party. That is the matter between the member and his party and has nothing to do so far as deeming clause in the Tenth Schedule is concerned. The action of a Political Party qua its member has no significance and cannot impinge on the fiction of law under the tenth Schedule. We reject the plea solely based on Clause 1 (b) of he Tenth Schedule.

14. Our attention was drawn to the decision of this court in *Ravi S. Naik* v. *Union of India.* In the said decision, Para 2 (1) (a) of the Tenth Schedule of the Constitution was construed and it was observed at p. 649 thus: (SCC para 11)

> "The said paragraph provides for disqualification of a member of a House belonging to a Political Party 'if he has voluntarily given up his membership of such Political Party'. The words 'voluntarily given up his membership' are not synonymous with 'resignation', and have a wider connotation. A person may voluntarily give up his membership of a Political Party even though he has not tendered his resignation from the membership of that Party. Even in the absence of a formal resignation from *membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the Political Party to which he belongs."*
>
> If he of his own volition joins another Political Party as the appellants did in the present case, he must be taken to have acquired the membership of another Political Party by abandoning the Political Party to which he belonged or must be deemed to have belonged under the explanations to para 2(1) of the Tenth Schedule. Of course, courts would insist on evidence which is positive, reliable and unequivocal."

60. As can seen from the above discussion, to attract disqualification on the ground of defection for voluntarily giving up his membership of a political party, it is necessary for the Petitioners to establish:—

a) That the Respondents were members of a political party;

b) That Respondents have from their own conduct or otherwise on evidence, voluntarily given up the membership of the political party as contained in para 2 of the tenth Schedule.

61. On perusing the pleadings and documents and specially the Order of expulsion of five members viz. Respondents 6 to 10 from the primary membership of the Indian National Congress, whereby they ceased to be members of the Indian National Congress Legislature Party, but continued to be members of the Indian National Congress under the Tenth Schedule, the letter dated 27-7-1998 (Exb. A to both the Petitions) claiming that they have formed a new party known as "GOA RAJIV CONGRESS PARTY" reveals in no uncertain terms that Respondent Nos. 6 to 10 have voluntarily given up membership of their original political party, attracting disqualification under para 2 (1) (a) of the Tenth Schedule of the Constitution.

62. The learned Advocate Dr. Coelho Pereira submits that the expulsion is bad since there was no Show-Cause Notice given for the same. He contends that the expelled members had indeed defended the demands of the Treasury benches on 24-7-1998 and thus the expulsion should not be looked into. He has attacked the expulsion as being bogus and fabricated.

63. On the other hand, Shri Nadkarni has submitted that the Order of expulsion, is still in force on all counts. The same is not challenged by the Respondents. He further submits that the expulsion has been admitted in the Writ Petitions, copies of which are on record here, filed by the Respondents themselves. He contends that the Speaker cannot sit in appeal/Judgement over the validity or otherwise of the expulsions.

64. Considering the aforesaid rival submissions, it can be seen that an order of expulsion dated 24-7-1998 expelling five of the members of the Indian National Congress viz. Respondent Nos. 6 to 10 in Disqualification Petition No. 2/98 is on record. The said Order of expulsion mentions that the expulsion is for the reason that on an inquiry, it had been revealed that the activities indulged in by the various members of the parties are even prejudicial to the interests of Goa and Goans at large and that they are indulging in antiparty activities including attempts to embarrass the Government and tarnish the image of the Indian National Congress, thereby acting in a calculated way, to lower the prestige of the party.

The said five members in their reply set out their case with respect to the Order of expulsion dated 24-7-1998 intimated on 25-7-1998. The have averred that the case of the applicants that his respondents were expelled from the Indian National Congress Party is false, malafide and fabricated. In support of the same, they have averred that such members had at no point of time been issued with any shown-cause notice before expulsion for any anti-party activities or on any of the allegations made against them contained in the purported letter. They have also pleaded that at no point of time, they were involved in any anti-party activities as alleged in the letter. They have also pleaded that they never made any demands to embarrass the Government or tarnish the party's image and that on the sitting of the House on 24-7-1998, they had defended the demands in the House. They have also pleaded that under the provision of the Indian National Congress Party, even suspension of a member contemplates that a Show-cause notice should be issued to the concerned members.

65. The fact remains that on 24-7-1998, there was factually an expulsion of these five members. It has not been brought to my attention that they have initiated any legal proceedings challenging this Order of expulsion. It is after I received the intimation as to their expulsion on 24-7-1998, that I have been informed on 27-7-1998 by 10 members claiming that it was decided to form a separate group in the Congress (I) Legislature Party under the name of GOA RAJIV CONGRESS PARTY under the leadership of Dr. Wilfred D'Souza MLA, Saligao. This is signed by all the 10 members and therefore includes also the expelled members. So long as no judicial authority has pronounced regarding the legality of the Orders of expulsion, I have to proceed on the footing of the five members having been expelled.

66. It is significant that while I had received intimation as to the expulsion on 25-7-1998, the ten members have, by letter dated 27-7-1998, have intimated about the meeting held on 24-7-1998 at the residence of the Dy. Chief Minister. Considering the way that both the parties have been hurriedly acting in their day-to-day in their unfortunate inter-se disputes, it appears to be, that if there was really a decision on 24-7-1998, Respondents would have promptly intimated me of the same forthwith instead of waiting till 27-7-1998. On probabilities, therefore, I am of the view that they have pleaded that the formation of the separate group on 24-7-1998, only to counter the case of Petitioner of expulsion and the consequential disqualification that may occur. The Order of expulsion is still holding the field and has not been struck down by any Court. On the date of defection, if the expelled members are not taken into account in the total strength of the Legislature party, the other defectors being five out of 20, have clearly incurred the disqualification. This reason applies only to the said five members.

67. I have therefore come to the conclusion that the Respondent Nos. 6 to 10 in Disqualification Petition No 2/98 have voluntarily given up their membership of the political party and are therefore Disqualified from being Members of the House.

68. In so far as Respondents Nos. 1 to 5 in both the petitions are concerned, it is the same documents (Exb. A) which has been jointly signed by them, claiming to have formed another party viz. "GOA RAJIV CONGRESS PARTY" also discloses in no uncertain terms that Respondents 1 to 5 have voluntarily given up their membership of their original political party viz. The Indian National Congress.

Even otherwise keeping the expulsion aside, from the very conduct of the Respondents and more specifically the letter dated 27-7-98 addressed by the Respondents (Exhibit A), it is clear that Respondents have voluntarily given up membership of their original political party, viz. The Indian National Congress by having formed another political party, viz. "GOA RAJIV CONGRESS PARTY"

Issue (a) is therefore held as proved and answered in the affirmative.

69. As far as issue (g) is concerned, it was incumbent on the Respondents to prove that there was a **split in the Original Political Party** and that the Respondents and other members of the Legislative Party constituted the group consisting of not less than 1/3rd of the Members of such Legislature party.

Para 3 of the Tenth Schedule of the Constitution inter alia provides that a member of the House shall not be disqualified on grounds of defection for having voluntarily given up his membership of his original political party where such member of a House makes a claim that he and other members of the legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third the members of such legislature party.

70. The intention of the legislature in providing for a split in the original political party in para 3 of the Tenth Schedule and defining it in the definition clause with clear distinction as to the definition of "legislature party" can leave no room for debate that the mandate to a person claiming benefit of paragraph 3 of the Tenth Schedule necessarily demands pleading and establishing by documents or otherwise, the two mandatory requirements viz.:

(i) That there should be a group representing a faction which has arisen as a result of a split in the original political party:

(ii) That in such group there should be not less than one-third of the members of such legislature party.

71. Keeping aside *G. Vishwanathan's* judgement (supra) which interprets the scope of para 2(1)(a) of the Tenth Schedule when a member is expelled from his original political party, yet the burden to prove the ingredients in paragraph 3 of the Tenth Schedule is on the Respondents who desire to avail of such claim or benefit.

72. That the two conditions above referred are mandatory has been eloquently spelt out by the Honourable Supreme Court in paragraph 38 of the Judgement of *Ravi S. Naik v/s Union of India* reported in AIR 1994 SC 1558 which as under:-

> "38. As noticed earlier paragraph 2 of the tenth Schedule provides for disqualification on the ground of defection if the conditions laid down therein are fulfilled and paragraph 3 of the said Schedule avoid such disqualifications in case of split. Para 3 proceeds on the assumption that but for the applicability of the said provision the disqualification under para 2 would be attracted. The burden to prove the requirements of para 2 is on the person who claims that the member has incurred the disqualification and the burden to prove the requirements of para 3 is on the member who claims that there has been a split in his original political party and by virtue of said split the disqualification under para 2 is not attracted. In the present case, Naik has not disputed that he has given up this membership of his original political party but he has claimed that there has been a split in the said party. The burden therefore lay on Naik to prove the alleged split satisfies the requirement of para 3. The said requirements are:
>
> (i) The member of a House should make a claim that he and other members of his legislature party constitute the group representing a faction which has arisen as a result of split in the original party, and
>
> (ii) Such group consists of not less than one-third of the members of such legislature party."

It may be relevant to quote what a Member of this House, elected to decide such question under para 6 of the Tenth Schedule, Dr. Kashinath G. Jhalmi, has stated in his decision dated 14-12-1990 in the matter of petition filed by Shri Luizinho Faleiro, MLA, against Dr. Luis Proto Barbosa, Speaker of the House (published in the Official Gazette of Goa Series II No. 37 Extraordinary No. 2 dated 15-12-1998) viz.

> "27. The anti-defection law disqualifies a legislator who has voluntarily given up the membership of his political party. Mere numbers do not remove this disqualification. One third of the members are no less liable if they abandon membership simultaneously. They are exempted only if they quit the Legislature party, **"as a result of a split" in the party outside. Proof of this wider split is essential to the application of the exemption clause.** The Speaker of the Kerala Assembly Mr. Varkala Radhakrishna rightly pointed out on November, 8 that the practice of condoning defection if the defection group has one third strength of the legislature party is against democracy."

It may be pertinent to state here that this Disqualification Order was unsuccessfully challenged in the High Court and also in the Honourable Supreme Court and the Disqualification Order was upheld even by the Honourable Supreme Court in the Judgement of *Dr. Luis Proto Barbosa v. Union of India & ors.* reported in AIR 1992 SC 1812.

73. Dr. J. E. Coelho Pereira took me to paragraph 3 of the Tenth Schedule and contended that when there is one - third of the Members of the Legislature Party, it would be sufficient; that the split took place on 24th July, 1998 as per the resolution annexed to the reply(Exb. R-9). That the concept of vertical split is not necessary but if the Members of the Legislature Party constituted one-third of the total Members of the Legislature, there would be sufficient compliance of the provisions of Paragraph 3 of the Tenth Schedule.

74. Prima facie it appears that the contention of Shri Nadkarni that there should be a vertical split throughout the entire party may not be tenable. However, on the closer look at the Tenth Schedule, it is to be seen that the framers of the Constitution in their Legislative wisdom have clearly sought to make distinction in the definition clause, with reference to the word **"Legislature Party"** and **"Original Political Party"**. Paragraph 3 of the Tenth Schedule uses both these words and requires the two mandates namely a split in the Original Political Party and one-third of the Members of the Legislature party being part of the group which represents the faction which has arisen as a result of the split in the Original Political Party. It may be argued that in such an event a vertical split as contemplated may be difficult if not prohibitive. As can be seen above the intention of inserting the Tenth Schedule in the Constitution is not to allow Defection but to curb/prevent Defection. Exception has been made as contained in paragraphs 3 and 4 of the Tenth Schedule when disqualification on the ground of Defections is not to apply. The Tenth Schedule is not a *'carta blanche'* for defections. If a person chooses to be a Member of a National Party, then he ought to know the consequences of his entry into such a party. For example in certain cases, certain members may be against a certain policy in their personal capacities. But when they join a party, they are bound by the directives or policies formulated by such party and are bound to vote and/or act in consonance with the policies of the political party. The right to dissent is indeed a valuable right to a person. However, this can always be done in the inner party forum and if a party despite hearing the dissent, by majority takes decision in a certain manner, then the members are bound to follow such decision. If in the name of democracy, the right of public dissent is used to make a democratic Government impossible, or feeble or ineffective, then the exercise of the right is an attack on democracy which democracy must defeat for its survival as an effective instrument of self Government.

76. Defection in a National Party naturally will require a split at all levels, and these levels may be more, which may not be the situation in case of a Regional Party. In the present case the Respondents have not set out any split in the Original Political Party as required. In fact in Paragraph 13 of their reply, their contention is an under:

> "13 .....
>
> That apart it is stated and submitted that in fact the respondents and other members of the Respondents group namely the members of the Legislative Assembly afore referred have taken resolution and in pursuance to that resolution split from the original Indian National Congress Party. The said resolution was taken on the 24th July, 1998 at a Meeting of the Respondents and other 5 Members of the Respondent group namely, Shri Chandrakant Chodankar, Dr. Carmo Pegado, Smt. Fatima D'Sa, Shri Jagdish Acharya and Shri Deo Mandrekar who met at the residence of the first respondent at Saligao after the Assembly session held on 24-7-1998 was over.
>
> Hereto annexed and marked as Exhibit R-9 is a true copy of the Resolution"
>
> Similar reply has been filed to the other Petition also and is therefore not being quoted to burden this Judgement any further.

76. This indicates that there is no other person of the Executive Members not even ordinary Members at block level, office bearers and others who constitute part of this group. The Respondents have annexed to their reply "Rules of the Indian National Congress". On a perusal of the same, it shows that in the Indian National Congress, there are various type of membership and also the organisational set-up of the Indian National Congress is of the following hierarchical set-up viz.

(i) Primary Committee;
(ii) Sub-ordinate Congress Committee/Block Committee;
(iii) District Congress Committee;
(iv) Pradesh Congress Committee;
(v) All Indian Congress Committee.

77. There is no averment by any of the Respondents that there is any split in these levels in the Indian National Congress. In fact, paragraph 13 of the reply reproduced above, indicates that besides the Members of the Legislative Assembly, no other person attended the meeting held on 24-7-1998 held at the residence of Respondent No. 1. There is no proof of split in the party outside, nor of wider split. Neither does the document Exb. R-9 indicate the same. In Ravi Naik's case above referred, the Honourable Supreme Court has pointed out that the split must be a one-time split. The document relied upon by Respondents purporting to be a resolution cannot be accepted to have been in existence as on 24-7-1998 for the following reasons:

a) The same was never forwarded to the office of the Speaker with the communication dated 27-07-1998, nor is it the case of the Respondents that a copy of the resolution was forwarded to any other authority;

b) The resolution while purporting to be that of 24-07-1998, appears to me merely a declaration. It bears no date.

78. In so far as the 10 members are concerned, I will have to advert to the requirements of para 3 of the Tenth Schedule. The Marginal Note of this paragraph states, that the disqualification on the ground of defection, not to apply in the cases of split. The sine qua non to escape the consequences of disqualification, is the existence of a split. This is the position reiterated by the Honourable Supreme Court in the matter of Ravi S. Naik especially at paragraph 38 at page 1573-74 (AIR). In the absence of a split in the original political party, even if the number of defectors consists of a group of not less than one-third members, the requirement of para 3 of the Tenth Schedule is not satisfied. The mischief sought to

be suppressed by the Tenth Schedule is the evil of political defection as the lure of office had been playing dominant part in such defections which defeats public interest.

79. The intimation addressed to me dated 27-7-1998, does not mention any split. But on the other hand, it only mentions that it was decided to form a separate group in the Congress (I) Legislature Party, the disqualification is clearly attracted. Forming a separate group in the Congress (I) Legislature Party, does not ipso facto constitute a split in the party. On the other hand, constituting a separate group must represent a faction which has arisen as a result of the split and the said faction cannot at all form a group in the very legislature party which had split.

80. No beneficial interpretation can be given to such Legislation. If the party make out a case within the four confines of the provisions of the law, he is entitled to a relief. In the present case it was incumbent on the Respondents to prove strictly the following:

a) That they and other members of the Legislature party constitute a group which has arisen as a result of **a split in the original political party;**

b) Such group consists of not less than one-third of the members of such legislature party.

81. The Respondents have failed to discharge their burden. It is sought to be contended that this will make a situation impossible. The submission of Dr. Coelho Pereira with respect does not find any merit since as indicated above Anti-Defection law and more specifically the Tenth Schedule has not been enacted to encourage Defection but to prohibit Defection. There is no averment not even proof of a split in the Original Political Party. The documents produced by the Respondents and sought to be relied upon which when read with the pleadings clearly indicate that there has not been any split either of the Executive Committee, State Level, Block level etc. I must add here that one-third split in the organisation/ /original political party is not required, but split should be at all rungs. The requirement of not less than one-third members is only with reference to members of the House.

It requires to be stressed that neither in the intimation dated 27-7-1998 nor in the purported Resolution (Exb. R-9), nor in the pleadings, the Respondents have set out or claimed of any split beyond the ten Respondents, nor is there any proof in this regard. The averments in the reply show positively that the entire group comprised of only these ten members and no one else.

If it was the intention of the Parliament that mere split in the Legislature Party with a minimum of one-third it's time being strength was sufficient to avoid disqualification, there would have been no need to specifically provide that the faction should have arisen as a result of a split in the original political party. So also, if "Legislature Party" and "political party" referred to in the Tenth Schedule were to be understood to have the same meaning, there was no need to define the two expressions separately in the definition clause. The intention of the Parliament is clear that both conditions, as reiterated by the Honourable Supreme Court in Ravi Naik's case, are to be satisfied to avoid disqualification under paragraph 3 of the Tenth Schedule.

Taking all the above factors into consideration, I have no hesitation to come to the conclusion that the Respondents have failed to discharge the burden to prove that there is a split in the Original Political Party to avail of the benefit of Paragraph 3 of the Tenth Schedule.

I therefore hold issue (g) as not proved and the same is therefore answered in the negative.

82. In the circumstances as aforestated, it is clear that the Respondents herein having failed to discharge the burden cast on them vide para 3 of the Tenth Schedule, have failed to prove that the constitution of the one-third group was a result of the split in the original political party and as such, on account of this, all the ten respondents have become subject to disqualification under the Tenth Schedule.

83. Further, in so far as the expelled members are concerned viz. Respondent Nos. 6 to 10 in Disqualification Petition No. 2/98, they having joined another political party, have become subject to disqualification under the Tenth Schedule.

84. Lastly, the Respondents Nos. 1 to 5 in each of the Petitions, having defected from their original political party and their number being only five, which is less than one-third as required in terms of paragraph 3 of the Tenth Schedule, have become subject to disqualification.

85. Accordingly, both petitions are allowed and hence the following Order.

ORDER

I declare that the Respondents viz. Respondent Nos. 1 to 5 in Disqualification Petition No. 1/98 and Respondent Nos. 1 to 10 in Disqualification Petition No. 2/98 have become subject to disqualification with effect from 27-7-1998 and as such are disqualified with effect from 27-7-1998 for being members of the Legislative Assembly of Goa in terms of Article 191 (2) of the Constitution on account of their disqualification under the Tenth Schedule of the Constitution of India.

Dated this 14th day of August, 1998, at Panaji.

Shri *Tomazinho Cardozo*
Speaker
Legislative Assembly of Goa.

Assembly Hall,
Panaji - Goa.
Dated: 17th August, 1998.

P. N. RIVANKAR
Secretary to the Legislative Assembly
of the State of Goa.

Department of Law & Judiciary

Law (Establishment) Division

Notification

No. 5-1(1) 95-LD (6)

The Notification No. 5-1 (1) 95/LD (6) dated 23-7-1998 is hereby rescinded with immediate effect.

By order and in the name of the Governor of Goa.

N. B. Narvekar, Under Secretary (Law).

Panaji, 17th August, 1998.

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